

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

RACHEL SIMS

PLAINTIFF/COUNTER-DEFENDANT

V.

CASE NO. 4:19-CV-653-JM

**LITTLE ROCK PLASTIC SURGERY,
P.A.; MICHAEL L. SPANN, M.D.;
AND KRISTY SPANN**

DEFENDANTS/COUNTER-PLAINTIFFS

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S
SECOND AMENDED COMPLAINT**

Comes Now Defendants Little Rock Plastic Surgery, P.A. (hereafter "LRPS"), Michael L. Spann, M.D. ("Dr. Spann"), and Kristy Spann ("Mrs. Spann"), under Fed. R. Civ. P. 56, for their motion for summary judgment, state:

1. Plaintiff filed her Verified Second Amended Complaint against Defendants in the above-referenced matter on or about November 27, 2019, alleging, *inter alia*, causes of actions for defamation, tortious interference with a contractual or business expectancy, false light, conversion, unlawful access to stored communications, computer trespass, and requesting a preliminary injunction.

2. Defendants now seek summary judgment on the majority of Plaintiff's remaining claims: (i) violations of the Stored Communications Act, (ii) defamation, (iii) false light, (iv) tortious interference with a business expectancy, (v) conversion, (vi) computer trespass and (v) intrusion upon seclusion.

3. Many of Plaintiff's claims rely on statements made by Defendants to either patients of LRPS or to media outlets. Defendants should receive qualified privilege for

the activities alleged by Plaintiff as Defendants are obligated to protect patient information and engage in certain reporting requirements pursuant to the Health Insurance Portability and Accountability Act Privacy Rules and Security Rule and the Arkansas Personal Information Protection Act, Ark. Code Ann. §4-110-101, *et seq.*

4. Further, applying existing case law to the undisputed material facts, it is evident that summary judgment in favor of Defendants is proper.

5. In support of this motion for summary judgment, Defendants rely on a contemporaneously filed Statement of Undisputed Material Facts (and the corresponding Exhibits) and Brief in Support.

6. For the reasons fully explained in the contemporaneously filed Brief in Support of the Motion for Summary Judgment, incorporated herein by reference, Defendants are entitled to a judgment as a matter of law on Plaintiff's claims of violations of the (i) Stored Communications Act, (ii) defamation, (iii) false light, (iv) tortious interference with a business expectancy, (v) conversion, (vi) computer trespass, and (vii) intrusion upon seclusion.

WHEREFORE, Defendants Little Rock Plastic Surgery, P.A., Michael L. Spann, M.D., and Kristy Spann pray that their motion for summary judgment be granted on the majority of Plaintiff's remaining claims and that they be awarded all fees and costs, and for all other relief to which they are entitled.

Respectfully submitted,

By: **Gabriel D. Mallard**

AR Bar. No. 2005130

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following counsel of record:

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